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Honorable Timothy D. Dore

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6 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

7 **ZELLER, Keith M. & Courtney M.,**
8 Debtors.

Number 18-12006

Adversary Number: 23-

9 **ZELLER, Keith M. & Courtney M.,**
10 Plaintiffs,
11 v.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOANS**

12 **UNITED STATES OF AMERICA**
13 **ACTING THROUGH THE U.S.**
DEPARTMENT OF EDUCATION,
14 Defendant.

15 Keith M. Zeller and Courtney M. Zeller, the Debtors (hereinafter "Plaintiffs") allege as
16 follows:

17 **A. Jurisdiction**

18 1. That this Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 & 28
19 U.S.C. 157(b)(2)(G). This matter relates to a case under Title 11 of the United States Code.
20 This proceeding is defined as a "core proceeding" as that is defined in the Code. Plaintiffs
21 consent to entry of final orders or judgment by the bankruptcy court in this adversary
22 proceeding.

23 **B. History**

24 2. Plaintiffs filed their Chapter 13 Bankruptcy Proceeding in the United States bankruptcy
25 court for the Western District of Washington on May 18, 2018 under case number 18-12006.

1 3. That this Court upon the filing of the Petition duly entered an Order for Relief under
2 the provisions of the Bankruptcy Code.

3 4. That Jason Wilson-Aguilar was appointed the chapter 13 Trustee in the Zeller
4 Chapter 13 case and serves in that capacity in this case.

5 **C. Facts and Allegations**

6 5. That pursuant to 11 USC § 523(a)(8) educational benefit overpayment or loan made,
7 insured, or guaranteed by a governmental unit, or made under any program funded in whole
8 or in part by a governmental unit or nonprofit institution; or an obligation to repay funds
9 received as an educational benefit, scholarship, or stipend; or any other educational loan that
10 is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of
11 1986, incurred by a debtor who is an individual are nondischargeable unless excepting the
12 debt from discharge would impose an undue hardship on the debtor or the debtor's
13 dependents. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278 (2010) ("the
14 bankruptcy court must make an independent determination of undue hardship . . . even if the
15 creditor fails to object or appear in the adversary proceeding."). This inquiry is undertaken
16 through a formal adversary proceeding in the bankruptcy court. *United Student Aid Funds*, 559
17 U.S. at 263-64; Fed. R. Bankr. P. 7001(6).

18 6. That on the 29th day of August 2019, Defendant, United States of America acting
19 through the U.S. Department of Education, filed a proof of claim which as been docket as
20 claim no 21 in the amount of \$337,578.83. Defendant, United States of America acting
21 through the U.S. Department of Education, has designated this proof of claim as a claim
22 arising out of student loans owed by Plaintiff, Courtney M Zeller.

23 7. That Plaintiffs believe and allege that the repayment of student loans to Defendant
24 would impose an undue hardship on Plaintiffs.

1 8. That on or about the 17th day of November 2022 The Department Justice issued
2 Guidance for Department of Justice Attorneys in regards to Student Loan Bankruptcy
3 Litigation which Plaintiffs are requesting the Defendant utilize in evaluating whether
4 Plaintiffs' student loans should be discharged. Plaintiffs acknowledge that the Guidance
5 Memorandum is an internal Department of Justice policy directed at Department components and
6 employees and it is not intended to and does not create any rights, substantive or procedural,
7 enforceable at law by any party in any matter.

8 9. Plaintiffs request that upon receipt of this Complaint that Defendant will provide
9 Plaintiffs' attorney with the record of Plaintiffs' account history, loan details, and, where
10 available, educational history.

11 10. Upon receipt of the information from Defendant as to Plaintiffs' student loans,
12 Plaintiffs will prepare and file in this adversary proceeding an Attestation (as prescribed by
13 the Department of Justice) in order to assist Defendant in stipulating to facts demonstrating
14 that the debts would impose an undue hardship on the Plaintiffs and recommend to the Court
15 that Plaintiffs' students loan be discharged if three conditions are satisfied: (1) Plaintiffs
16 presently lack an ability to repay the loan; (2) Plaintiffs' inability to pay the loan is likely to
17 persist in the future; and (3) Plaintiffs have acted in good faith in the past in attempting to
18 repay the loan.

19 11. Upon receipt of Plaintiffs' Attestation Plaintiffs request that Defendant stipulate to facts
20 demonstrating that a debt would impose an undue hardship and recommend to this Court that
21 Plaintiffs' student loan be discharged

22 **D. Request for Relief**

23 WHEREFORE, Plaintiffs respectfully requests the entry of a judgment declaring the
24 debts owed Defendant to be dischargeable debts and such other and further relief as the
25 Court.

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COMPLAINT - 3

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1 Dated this 3rd day of February 2023.

2 Law Offices of Travis Gagnier, Inc., P.S.
3 Attorneys for Plaintiffs

4 /s/ Travis A. Gagnier

5 Travis A. Gagnier, WSBA #26379

6 Gregory Jalbert, WSBA #9480

7 Of Counsel
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